

REMARKS/ARGUMENTS

The above-identified patent application has been reviewed in light of the Advisory Action dated January 28, 2008 and the Final Office Action having a mailing date of August 27, 2007. In light of the amendments presented above and the arguments presented below, Applicant respectfully submits that the pending claims are in condition for allowance.

In the Advisory Action the Examiner stated that an objection concerning Claim 5 had not been addressed; Claims 5 and 8 were rejected under 35 USC §102(b) as being anticipated by Rabinovich; and Claims 5, 7, 8 and 21-24 were rejected under 35 USC §103(a) as being unpatentable over Ball and Minnick.

Claim 5 has been withdrawn (but currently amended). Claim 8 has been amended. Claims 1-4, 6 and 9-20 were previously cancelled. Claims 21-24 are cancelled. Claims 25-29 have been added. Accordingly, Claims 5, 8 and 25-29 are pending.

*Previous Allowance of Claims*

In a non-final Office Action dated March 27, 2007 the Examiner stated:

13. Claims 6 and 9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

On March 27, 2007 Claims 6 and 9, which depend on Claim 5, read as follows:

5. An overflow system for a bathtub comprising:

a pipe;

a cap interconnected to said pipe, said cap having a cylindrical body bounded by an outer face, said cylindrical body having interior threads and an annular flange that extends radially outwardly from an open end of the cylindrical body;

a membrane affixed to said face and said flange to seal said open end of said cap; and

wherein said cap threadingly engages said pipe.

6. The system of Claim 5 wherein said thin membrane is positioned substantially entirely on said face and has an outer surface coincident with an outer surface of said flange.

9. The system of Claim 5, further including a second annular flange that extends radially inwardly from said open end of the cylindrical body.

Therefore, pursuant to the Examiner's prior acknowledgment of allowability, an allowable claim that incorporates the elements of Claim 6 rewritten in independent form would read, for example:

6. (Currently Amended) An overflow system for a bathtub comprising:

a pipe;

a cap interconnected to said pipe, said cap having a cylindrical body bounded by an outer face, said cylindrical body having interior threads and an annular flange that extends radially outwardly from an open end of the cylindrical body;

a membrane affixed to said face and said flange to seal said open end of said cap; and

wherein said cap threadingly engages said pipe; and

The system of Claim 5 wherein said thin membrane is positioned substantially entirely on said face and has an outer surface coincident with an outer surface of said flange.

6. (Clean Version) An overflow system for a bathtub comprising:

a pipe;

a cap interconnected to said pipe, said cap having a cylindrical body bounded by an outer face, said cylindrical body having interior threads and an annular flange that extends radially outwardly from an open end of the cylindrical body;

a membrane affixed to said face and said flange to seal said open end of said cap; and

wherein said cap threadingly engages said pipe; and

wherein said thin membrane is positioned substantially entirely on said face and has an outer surface coincident with an outer surface of said flange.

New Claim 25 is verbatim identical to Claim 6 which the Examiner previously indicated as being allowable. Thus Claim 25 is allowable.

Similarly, pursuant to the Examiner's acknowledgment of allowability, an allowable claim that incorporates the elements of Claim 9 rewritten in independent form would read, for example:

9. (Currently Amended) An overflow system for a bathtub comprising:

a pipe;

a cap interconnected to said pipe, said cap having a cylindrical body bounded by an outer face, said cylindrical body having interior threads and an annular flange that extends radially outwardly from an open end of the cylindrical body;

a membrane affixed to said face and said flange to seal said open end of said cap; and  
wherein said cap threadingly engages said pipe; and

~~The system of Claim 5,~~ further including a second annular flange that extends radially inwardly from said open end of the cylindrical body.

9. (Clean Version) An overflow system for a bathtub comprising:

a pipe;

a cap interconnected to said pipe, said cap having a cylindrical body bounded by an outer face, said cylindrical body having interior threads and an annular flange that extends radially outwardly from an open end of the cylindrical body;

a membrane affixed to said face and said flange to seal said open end of said cap; and

wherein said cap threadingly engages said pipe; and

further including a second annular flange that extends radially inwardly from said open end of the cylindrical body.

New Claim 27 is verbatim identical to Claim 9 which the Examiner previously indicated as being allowable. Thus Claim 27 is allowable.

### ***Objection to the Specification***

In an Office Action dated August 27, 2007, the Examiner objected to the specification as lacking proper antecedent basis for the subject matter set forth in the last two lines of Claim 5. Applicants respectfully traverse this objection. The last two lines of Claim 5 as they read on August 27, 2007 state: "said membrane is positioned substantially entirely on said face and has an outer surface coincident with an outer surface of said flange". This language originated in cancelled Claim 6 and now is found in Claim 25. The amendment and response filed July 26, 2007 provided the support for the objected-to language<sup>1</sup>. The Examiner, entered the amendments found in that

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<sup>1</sup>More specifically, in that amendment the specification was amended as follows: "With reference to FIGS. 2 and 3, a cap 52 has an outer face 54 which has a cylindrical body 60 which has interior threads 62 that are adapted to mate with the threads 31 associated with the pipe 34 (FIG. 2). The cap 52 also has an annular flange 64, which includes an outer surface 68, that extends radially outwardly from the open end of the cylindrical body 60. A thin sealing membrane 66, which has an outer surface 80, is affixed to the face 54 (FIG. 2) of cap 52 so as to seal the aperture in the cap when it is screwed into the threads 31 so that the cap can be effectively sealed against the port 30." (Amendment and Response dated July 26, 2007, pages 2 and 7).

Amendment and Response and did not object to the elements of Claim 6 as lacking proper disclosure in the Final Office Action Summary dated August 27, 2007.

Applicant therefore submits that because Fig. 3 clearly shows that the outer surface (80) of the membrane (66) is coincident with the outer surface (68) of the flange (64), the objection must be withdrawn. Furthermore, one of skill in the art would appreciate upon review of Fig. 2 that the membrane (66) is positioned substantially entirely on said face (54).

### ***New Claims***

Claims 25-29 have been added and are believed allowable. Claims 25 and 27 correspond precisely to claims previously indicated as being allowable. As outlined above, in an Office Action Summary dated March 27, 2007 the Examiner indicated that dependent Claims 6 and 9 would be allowable if rewritten in independent form. In an Amendment and Response dated July 26, 2007 Applicant adopted the Examiner's suggestion and amended Independent Claim 5 by adding the subject matter of allowable Claim 6. In addition, the subject matter of allowable Claim 9 was added to the subject matter of Claim 5 to form new Claim 21.

To facilitate review, withdrawn Claim 5 has been amended to return it to the version presented prior to the March 27, 2007 Office Action Summary. 37 C.F.R. §1.121(c)(2). New Claim 25 is allowable because it is simply former Claim 6 rewritten in independent form to include all of the limitations of the base claim (Claim 5). It is appreciated that the Examiner may have an issue with the phrase "thin membrane" as perhaps lacking antecedent basis. Although it is believed that such phrase would be understood by one of skill in the art, Applicant invites the Examiner to make

an examiner's amendment if he believes that this is not case. Claim 26 is allowable since it includes the elements of cancelled Claim 7 and depends on allowable Claim 25.

Similarly, new Claim 27 is allowable because it is simply former dependent Claim 9 rewritten in independent form to include all of the limitations of the base claim (Claim 5). Claims 28 and 29 are allowable since they include the elements of cancelled Claim 7 and Claim 8, respectively, and depend on allowable Claim 27.

***Claim rejections - 35 USC §102***

The Examiner has rejected Claims 5 and 8 as being anticipated by Rabinovich.

Claim 5

Withdrawal of this rejection is respectfully requested since Claim 5 has been cancelled.

Claim 8

Withdrawal of this rejection is respectfully requested since Claim 8 has been amended to depend on an allowable Claim 25.

Claim 25 and its dependents

Newly-presented Claim 25 (previously allowed Claim 6) includes features not found in Rabinovich. For example, Rabinovich fails to disclose a membrane that is "positioned substantially entirely on said face and has an outer surface coincident with an outer surface of said flange".

Claim 27 and its dependents

Claim 27 (previously allowed Claim 9) includes features not found in Rabinovich. For example, Rabinovich fails to disclose “a second annular flange that extends radially inwardly from said open end of the cylindrical body”.

***Conclusion***

Based at least upon the foregoing, Applicant believes that all pending claims are in condition for allowance and such disposition is respectfully requested. Thus it is respectfully requested that the Examiner contact the undersigned at his earliest convenience if any concerns exist with respect to this case.

Respectfully submitted,

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